

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

COLUMBIA RIVERKEEPER, IDAHO
RIVERS UNITED, SNAKE RIVER
WATERKEEPER, PACIFIC COAST
FEDERATION OF FISHERMEN'S
ASSOCIATIONS, and THE INSTITUTE
FOR FISHERIES RESOURCES,

Plaintiffs,

V.

SCOTT PRUITT, et al.

Defendants.

No. 2:17-cv-00289-RSM

DECLARATION OF MILES JOHNSON

I, MILES JOHNSON, state and declare as follows:

1. My name is Miles Johnson, and I am co-counsel for Columbia Riverkeeper in this case. I make this declaration based on my own personal knowledge to describe the sources of the documents in Plaintiff's possession that are referenced in Plaintiffs' opening brief as Exhibits 1 – 30.¹

2. The following exhibits are true and correct copies of published scientific studies,

1 The court should consider these documents because they are relevant to the case and EPA
has agreed that “this matter can be decided on cross-motions for summary judgment as supported
by relevant documents in the possession of the parties or by affidavits and/or declarations by the
parties’ employees and members.” *See Dkt. # 14*, p. 3 (Jun. 6, 2017).

1 scientific review papers, and regulatory documents written by employees of the Environmental
2 Protection Agency (“EPA”), other federal agencies, and independent scientific researchers
3 regarding Columbia River basin salmonids and water temperature. Where doing so saved space
4 and did not compromise the meaning or integrity of the document, I redacted pages from some of
5 the following documents. I obtained these documents by downloading them from the respective
6 agencies’ and scientists’ websites.

- 7 • Exhibit 1: U.S. Environmental Protection Agency, *Guidance for Water*
8 *Quality-based Decisions: The TMDL Process* (1991).
- 9 • Exhibit 2: Northwest Power and Conservation Council, *Return to the River*
10 (2000).
- 11 • Exhibit 3: U.S. Environmental Protection Agency, *Summary of Technical*
12 *Literature Examining the Physiological Effects of Temperature on Salmonids*
13 (2001).
- 14 • Exhibit 4: U.S. Environmental Protection Agency, *EPA Region 10 Guidance for*
15 *Pacific Northwest State and Tribal Temperature Water Quality Standards* (2003).
- 16 • Exhibit 5: U.S. Environmental Protection Agency, *EPA Region 10 Climate*
17 *Change and TMDL Pilot Research Plan* (2013).
- 18 • Exhibit 6: Wild Fish Conservancy, *2015 Temperature and Flow Conditions of*
19 *Pacific Northwest Rivers: A Water Quality and Quantity Crisis and the Need for*
20 *Fishery Closures and the Development of a NOAA Approved Drought*
21 *Management Plan for the Protection of ESA-listed Salmonids* (2015).
- 22 • Exhibit 7: Northwest Fisheries Science Center, *Status Review Update for Pacific*
23 *Salmon and Steelhead Listed Under the Endangered Species Act: Pacific*
24 *Northwest* (2015).
- Exhibit 8: National Marine Fisheries Service, *Biological Opinion on the EPA’s*
Proposed Approval of Certain Oregon Water Quality Standards for Temperature
and Intergravel Dissolved Oxygen (2015).
- Exhibit 9: Fish Passage Center, *Requested Data Summaries and Actions*
Regarding Sockeye Adult Fish Passage and Water Temperature Issues in the
Columbia and Snake Rivers (2015).

- Exhibit 10: Fish Passage Center, *Requested Data Summaries Regarding Summer Chinook Adult Fish Passage and Water Temperature in the Columbia and Snake River* (2016).
- Exhibit 11: Fish Passage Center, *The Effect of Water Temperature on Steelhead Upstream Passage* (2016).
- Exhibit 12: U.S. Environmental Protection Agency, *Comments on NOAA Fisheries 2015 Adult Sockeye Salmon Passage April 2016 Draft Report* (2016).
- Exhibit 13: Fish Passage Center, *Review of April 2016 Draft of NOAA Fisheries Report 2015 Sockeye Salmon Passage Report* (2016).
- Exhibit 14: National Marine Fisheries Service, *2015 Adult Sockeye Salmon Passage Report* (2016).

3. The following exhibits are true and correct copies of documents that were in the possession of EPA Region 10. I received these documents from EPA in response to a Freedom of Information Act request that I sent to EPA on behalf of Columbia Riverkeeper on August 22, 2016.

- Exhibit 15: Memorandum of Agreement, Columbia/Snake Rivers Total Maximum Daily Load for Total Dissolved Gas and Temperature (Oct. 16, 2000).
- Exhibit 16: U.S. Environmental Protection Agency, *All Key Dates Columbia Temperature TMDL* (Apr. 16, 2001).
- Exhibit 17: U.S. Environmental Protection Agency, *Work Plan for Columbia/Snake Temperature TMDLs* (Apr. 16, 2001).
- Exhibit 18: Washington Department of Ecology Letter to EPA Region 10, (Sep. 4, 2001).
- Exhibit 19: Idaho Department of Environmental Quality Letter to EPA Region 10 (Sept. 17, 2001).
- Exhibit 20: Oregon Department of Environmental Quality Letter to EPA Region 10 Regarding "Columbia/Snake Rivers TMDL" (Oct. 4, 2001).
- Exhibit 21: EPA Region 10 Letter to Jay Minthorn, Chairman, Columbia River Inter-Tribal Fish Commission (Jan. 15, 2002).

- Exhibit 22: U.S. Environmental Protection Agency, *Columbia/Snake Rivers Preliminary Draft Temperature TMDL* (Jul. 2003).
- Exhibit 23: Washington Department of Ecology and Oregon Department of Environmental Quality Letter to U.S. Council on Environmental Quality (Feb. 12, 2003).
- Exhibit 24: U.S. Environmental Protection Agency, *EPA Strategy For Consultation and Coordination with Indian Tribal Governments For Completing Mainstem Columbia River and Snake River TMDLs* (Mar. 18, 2003).
- Exhibit 25: U.S. Environmental Protection Agency, *Modeling Background and Issues: Assessment of Impacts of Rocky Reach Dam* (Sep. 9, 2004).
- Exhibit 26: U.S. Environmental Protection Agency Letter to U.S. Army Corps of Engineers (Feb. 20, 2007).

4. The following exhibits are true and correct copies of documents that I downloaded from Ecology and DEQ's websites, respectively.

- Exhibit 27: Oregon Department of Environmental Quality, *Oregon's 2012 TMDL Priorities and Schedule* (Sep. 30, 2014).
- Exhibit 28: Washington Department of Ecology, *Water Quality Improvement Projects (TMDLs), Columbia River Projects webpage* (downloaded on Aug. 21, 2017).

5. The following exhibits are true and correct copies of email communications between me and representatives of Ecology and DEQ, respectively, reflecting the absence of any plans by the states to prepare TMDLs for the Columbia and Snake rivers.

- Exhibit 29: Emails exchanged between Miles Johnson, Columbia Riverkeeper, and Melissa Gildersleeve, Ecology (Jul. 5, 2015).
- Exhibit 30: Emails exchanged between Miles Johnson, Columbia Riverkeeper, and Paula Calvert, DEQ (Jul. 5, 2015).

6. In addition to reviewing the above documents, I also supervised Columbia Riverkeeper's research into the causes of, and potential solutions to, water temperature problems in the Columbia and Snake Rivers. In 2016, Columbia Riverkeeper retained a computer

1 modeling expert, Mathew Shultz, to EPA's "RBM10" computer model (the same model EPA
2 used to prepare the 2003 Draft TMDL) to model water temperature in the Columbia and Snake
3 Rivers under various climatological and flow scenarios. Under my direction, Mr. Shultz updated
4 RBM10 with modern meteorological data, re-calibrated the model, and successfully performed
5 dozens of model runs that provided Columbia Riverkeeper with substantial new information
6 about temperature in the Columbia and Snake Rivers. Mr. Shultz completed all of these tasks
7 within roughly three months during the summer of 2016. While Mr. Shultz possesses significant
8 technical and scientific expertise, neither Mr. Shultz nor I had ever used EPA's RBM10 model
9 before we began this project.

10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
11 and correct to the best of my knowledge.

12 Executed this 29th day of August, 2017, at Hood River, Oregon.

13
14 /s/ Miles Johnson
MILES JOHNSON

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2017, I electronically filed the foregoing Declaration of Miles Johnson and all accompanying exhibits with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: August 30, 2017

/s/ Bryan Hurlbutt
BRYAN HURLBUTT